

AMENDED IN SENATE APRIL 1, 2002

SENATE BILL

No. 1872

Introduced by Senator Bowen

February 22, 2002

An act to amend Sections 17538 and 17538.3 of the Business and Professions Code, relating to business practices.

LEGISLATIVE COUNSEL'S DIGEST

SB 1872, as amended, Bowen. Vendors: refund and return policies: consumer remedies.

Existing law generally requires a vendor conducting business through the Internet or any other electronic means of communication to, among other things, disclose to a buyer located in this state the vendor's return and refund policy. Certain activities are exempt from these and other related provisions. A violation of these provisions is a crime.

This bill would require a vendor that offers a return and refund policy allowing the return of goods or cancellation of services to process and send to the buyer any refund due within 5 business days *or to otherwise arrange to credit the buyer's account*. The bill would require the vendor to pay a penalty if the refund is not sent to the buyer ~~within that time~~ *or if the credit is not made as required*. The bill would authorize a buyer who does not receive a refund *or credit* to file an action in small claims court, with specified remedies.

This bill would also extend the application of the vendor return and refund disclosure requirement and the associated remedies to certain activities currently exempt from the disclosure requirement.

Because this bill would revise the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17538 of the Business and Professions
2 Code is amended to read:
3 17538. (a) It is unlawful in the sale or lease or offering for
4 sale or lease of goods or services, for any person conducting sales
5 or leases by telephone, the Internet or other electronic means of
6 communication, mail order, or catalog in this state, including, but
7 not limited to, the offering for sale or lease on television, radio, or
8 the Internet, or by any other electronic means of communication
9 or telecommunications device, of goods or services that may be
10 ordered by mail, telephone, the Internet, or other electronic means
11 of communication or telecommunications device, or for any
12 person advertising in connection with those sales, leases, or
13 advertisements a mailing address, telephone number, or Internet
14 or other electronic address, to accept payment from or for a buyer,
15 for the purchase or lease of goods or services ordered by mail,
16 telephone, the Internet, or other electronic means of
17 communication or telecommunications device, whether payment
18 to the vendor is made directly, through the mail, by means of a
19 transfer of funds from an account of the buyer or any other person,
20 or by any other means, and then permit 30 days, unless otherwise
21 conspicuously stated in the offering or advertisement, or unless a
22 shorter time is clearly communicated by the person conducting the
23 sale or lease, to elapse without doing any one of the following
24 things:
25 (1) Shipping, mailing, or providing the goods or services
26 ordered.
27 (2) Mailing a full refund or, if payment was made by means of
28 a transfer from an account, (A) crediting the account in the full
29 amount of the debit, or (B) if a third party is the creditor, issuing

1 a credit memorandum to the third party, who shall promptly credit
2 the account in the full amount of the debit.

3 (3) Sending the buyer a letter or other written notice (A)
4 advising the buyer of the duration of an expected delay expressed
5 as a specific number of days or weeks, or proposing the
6 substitution of goods or services of equivalent or superior quality,
7 and (B) offering to make a full refund, in accordance with
8 paragraph (2), within one week if the buyer so requests. The
9 vendor shall provide to the buyer in that letter or written notice a
10 toll-free telephone number or other cost-free method to
11 communicate the buyer's request for a full refund. If the vendor
12 proposes to substitute goods or services, the vendor shall describe
13 the substitute goods or services in detail, indicating fully how the
14 substitute differs from the goods or services ordered.

15 (4) (A) Shipping, mailing, or providing substitute goods or
16 services of equivalent or superior quality, if the buyer is extended
17 the opportunity to return the substitute goods or services and the
18 vendor promises to refund to the buyer (i) the cost of returning the
19 substitute goods or services and (ii) any portion of the purchase
20 price previously paid by the buyer.

21 (B) Except as provided in subparagraph (C), a notice to the
22 buyer shall accompany the mailing, shipping, or providing of the
23 substitute goods or services that informs the buyer of the
24 substitution; describes fully how the substitute differs from the
25 goods or services ordered, except that obvious nontechnical
26 differences, such as color, need not be described; and discloses the
27 buyer's right to reject the substitute goods or services and obtain
28 a full refund of the amount paid, plus the cost of returning the
29 substitute goods or services.

30 (C) The vendor may omit from the notice required by
31 subparagraph (B) a description of how the substitute goods or
32 services differ from the ordered goods or services if the notice
33 otherwise complies with subparagraph (B), and if all the following
34 requirements are complied with:

35 (i) The vendor maintains at least 100 retail outlets located in at
36 least 20 counties in this state that are open to the public regularly
37 during normal business hours where buyers can order catalog
38 goods, pick them up, and return them for refunds.

39 (ii) The vendor maintains a toll-free telephone number and
40 provides to each buyer, at the time of the buyer's call, a full

1 description of how substitute goods or services differ from ordered
2 goods or services. The toll-free telephone number shall operate
3 and be staffed at all times during which goods or services normally
4 are available for pick up from the vendor's retail outlets.

5 (iii) If the buyer picks up substitute goods or services from the
6 vendor's retail outlet, the notice required by subparagraph (B) as
7 modified by this subparagraph is placed on, or attached to, the
8 exterior of the package or wrapping containing the substitute, or
9 is handed to the buyer at the time the buyer picks up the substitute.

10 (iv) The notice contains a reference number or some other
11 means of identifying the ordered goods or services and the
12 substitute goods or services.

13 (v) The notice contains the vendor's toll-free telephone number
14 and instructions to the buyer that the buyer may call that number
15 to obtain a full description of how the substitute differs from the
16 ordered goods.

17 (b) For purposes of paragraphs (3) and (4) of subdivision (a),
18 goods or services shall be considered of "equivalent or superior
19 quality" only if they are (1) substantially similar to the goods or
20 services ordered, (2) fit for the usual purposes for which the goods
21 or services ordered are used, and (3) normally offered by the
22 vendor at a price equal to or greater than the price of the goods or
23 services ordered.

24 (c) When a buyer makes an initial application for an open-end
25 credit plan, as defined in the Federal Consumer Credit Protection
26 Act (15 U.S.C. Sec. 1602), at the same time the goods or services
27 are ordered, and the goods or services are to be purchased on credit,
28 the person conducting the business shall have 50 days, rather than
29 30 days, to perform the actions specified in this section.

30 (d) A vendor conducting business through the Internet or any
31 other electronic means of communication shall do all of the
32 following when the transaction involves a buyer located in this
33 state:

34 (1) Before accepting any payment or processing any debit or
35 credit charge or funds transfer, the vendor shall disclose to the
36 buyer in writing or by electronic means of communication, such
37 as E-mail or an on-screen notice, the vendor's return and refund
38 policy, the legal name under which the business is conducted and,
39 except as provided in paragraph (3), the complete street address
40 from which the business is actually conducted.



(2) If the disclosure of the vendor's legal name and address information required by this subdivision is made by on-screen notice, all of the following shall apply:

(A) The disclosure of the legal name and address information shall appear on any of the following: (i) the first screen displayed when the vendor's electronic site is accessed, (ii) on the screen on which goods or services are first offered, (iii) on the screen on which a buyer may place the order for goods or services, or (iv) on the screen on which the buyer may enter payment information, such as a credit card account number. The communication of that disclosure shall not be structured to be smaller or less legible than the text of the offer of the goods or services.

(B) The disclosure of the legal name and address information shall be accompanied by an adjacent statement describing how the buyer may receive the information at the buyer's E-mail address. The vendor shall provide the disclosure information to the buyer at the buyer's E-mail address within five days of receiving the buyer's request.

(C) Until the vendor complies with subdivision (a) in connection with all buyers of the vendor's goods or services, the vendor shall make available to a buyer and any person or entity who may enforce this section pursuant to Section 17535 on-screen access to the information required to be disclosed under this subdivision.

(3) The complete street address need not be disclosed as required by paragraph (1) if the vendor utilizes a private mailbox receiving service and all of the following conditions are met: (A) the vendor satisfies the conditions described in paragraph (2) of subdivision (b) of Section 17538.5, (B) the vendor discloses the actual street address of the private mailbox receiving service in the manner prescribed by this subdivision for the disclosure of the vendor's actual street address, and (C) the vendor and the private mailbox receiving service comply with all of the requirements of subdivisions (c) to (f), inclusive, of Section 17538.5.

(e) (1) For the purpose of paragraph (1) of subdivision (d), a "return and refund policy" shall include both of the following:

(A) If a buyer is permitted to return a good or cancel a service that he or she purchased or contracted for on or after January 1, 2003, the vendor shall, within five business days, process and send to the buyer any refund due to the buyer as a result of the return or

1 cancellation, *or, if the buyer's payment was made by means of a*
2 *transfer from an account, the vendor shall credit the account in the*
3 *full amount of the debit within one business day, or if a third party*
4 *is the creditor, the vendor shall issue a credit memorandum to the*
5 *third party within one business day and the third party shall*
6 *promptly credit the account in the full amount of the debit.*

7 (B) A vendor who fails to comply with subparagraph (A) shall
8 be liable to the buyer for the amount of the refund plus a penalty
9 equal to 20 percent interest on that amount compounded daily
10 beginning the day after the refund was required to be sent *or credit*
11 *was required to be made* to the buyer pursuant to subparagraph (A)
12 for the period of time from that day until the refund is sent *or credit*
13 *is made* to the buyer. *If a third party is the creditor, interest shall*
14 *begin to accrue on the day after the credit memorandum was*
15 *required to be issued to the third party by the vendor.*

16 (2) A buyer who has not received his or her refund *or credit* as
17 provided in paragraph (1) may bring an action in small claims
18 court against the vendor to recover the amount of the refund *or*
19 *credit* and the penalty described in paragraph (1). In addition, the
20 buyer may request the court to award, and the court may award, an
21 additional amount not exceeding one thousand dollars (\$1,000) to
22 be payable to the buyer only if the refund *or credit* and penalty
23 described in paragraph (1), including any modification ordered by
24 the court, is not received by the buyer within 30 days of service on
25 the vendor of the decision of the court in favor of the buyer in the
26 action. For the purposes of this paragraph, a defendant is not
27 required to personally appear, but may appear by affidavit or by
28 written instrument.

29 (3) The rights, remedies, and penalties established in paragraph
30 (2) are in addition to rights, remedies, and penalties established in
31 subdivision (g) and under any other law.

32 (f) As used in this section and Section 17538.3, the following
33 words have the following meanings:

34 (1) "Goods" means tangible chattels, including certificates or
35 coupons exchangeable for those goods, and including goods
36 which, at the time of the sale or subsequently, are to be so affixed
37 to real property as to become a part of that real property, whether
38 or not severable therefrom.

39 (2) "Person" means an individual, partnership, corporation,
40 association, or other group, however organized.

1 (3) “Buyer” means a person who seeks or acquires, by
2 purchase or lease, any goods or services for any purpose.

3 (4) “Services” means work, labor, and services, including
4 services furnished in connection with the sale or repair of goods.

5 (5) “Vendor” means a person who, as described in subdivision
6 (a), vends, sells, leases, supplies, or ships goods or services, who
7 conducts sales or leases of goods or services, or who offers goods
8 or services for sale or lease. “Vendor” does not include a person
9 responding to an electronic agent in connection with providing
10 goods or services to a buyer if the aggregate amount of all
11 transactions with the buyer does not exceed ten dollars (\$10).

12 (6) “Internet” means the global information system that is
13 logically linked together by a globally unique address space based
14 on the Internet Protocol (IP), or its subsequent extensions, and that
15 is able to support communications using the Transmission Control
16 Protocol/Internet Protocol (TCP/IP) suite, or its subsequent
17 extensions, or other IP-compatible protocols, and that provides,
18 uses, or makes accessible, either publicly or privately, high level
19 services layered on the communications and related infrastructure
20 described in this paragraph.

21 (7) “Electronic agent” means a computer program designed,
22 selected, or programmed to initiate or respond to electronic
23 messages or performances without review by an individual.

24 (g) Any violation of the provisions of this section is a
25 misdemeanor punishable by imprisonment in the county jail not
26 exceeding six months, by a fine not exceeding one thousand
27 dollars (\$1,000), or by both that imprisonment and fine.

28 SEC. 2. Section 17538.3 of the Business and Professions
29 Code is amended to read:

30 17538.3. The provisions of Section 17538, other than
31 subdivisions (d) and (e) of that section, do not apply to any of the
32 following:

33 (a) To instances in which all advertising for goods or services
34 contains a notice as to each item or service offered, which, in the
35 case of printed advertising, shall be in a type size at least as large
36 as that indicating the price, that a delay may be expected of a
37 specified period. In such cases, one of the events described in
38 Section 17538 must occur no later than the expiration of the period
39 specified in the advertisement.

1 (b) To goods or services, such as quarterly magazines, which by
2 their nature are not ready for use or consumption until a future date
3 and for that reason cannot be stocked at the time of order.

4 (c) To installments other than the first of goods, such as
5 magazine subscriptions, ordered for serial delivery.

6 (d) To any telecommunications goods and services sold by a
7 telecommunications company, except those telecommunications
8 goods and services purchased for use primarily for personal,
9 family, or household purposes.

10 (e) To financial services offered in the ordinary course of
11 business by a supervised bank, national banking association, bank
12 holding company, a state or federal savings and loan association,
13 a state or federal credit union, or a subsidiary or affiliate thereof,
14 or an authorized industrial loan company, a licensed personal
15 property broker, a licensed consumer finance lender, a licensed
16 commercial finance lender, or a person licensed pursuant to
17 Division 4 (commencing with Section 10000).

18 (f) To any delay in delivery of goods or services caused by the
19 United States Postal Service, an act of God, or a labor strike by the
20 vendor's employees.

21 SEC. 3. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

